

UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF NEW HAMPSHIRE

Joseph Vaillancourt

v.

Civil No. 06-cv-438-JD

New Hampshire Department  
of Corrections, et al.

O R D E R

Joseph Vaillancourt moves for default judgment in his favor, arguing that the defendants failed to file a responsive pleading within the time allowed under the federal rules. Vaillancourt is mistaken.

When, as here, a prisoner brings suit seeking redress from a governmental entity or its employee, his complaint is subject to review under 28 U.S.C. § 1915A. Service is not made on any defendant until that review is complete. See, e.g., Brewer v. Paugh, 2007 WL 545997 at \*3, n.2 (N.D.W. Va. Feb. 16, 2007); Mason v. Kearney, 2002 WL 31207195 at \*2 (D. Del. Sept. 26, 2002). Federal Rule of Civil Procedure 12(a)(1) requires a defendant to file an answer within twenty days after being served with the complaint and summons unless service has been waived, when the deadline is extended.

Vaillancourt filed his motion for default judgment before the magistrate judge issued a report and recommendation on §

1915A review and, therefore, before the defendants were properly served. Therefore, no grounds exist for a default judgment based on the defendants' response to his complaint.

Conclusion

For the foregoing reasons, the plaintiff's motion for a default judgment (document no. 98) is denied.

SO ORDERED.

  
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Joseph A. DiClerico, Jr.  
United States District Judge

May 3, 2007

cc: Nancy J. Smith, Esquire  
Nancy Sue Tierney, Esquire  
Joseph Vaillancourt, pro se